

INITIAL STATEMENT OF REASONS:

This action amends and adopts provisions governing the inmate indecent exposure within the California Department of Corrections and Rehabilitation (CDCR). California Code of Regulations (CCR), Sections 3000, 3315, 3323, and 3341.5 are being amended as a result of a Court decision in the case of *Freitag vs. California Department of Corrections and Rehabilitation*, Case No. CV-00-02278-TEH, U.S. Court of Appeals for the Ninth Circuit. The original Indecent Exposure Program was implemented through a 24-month Pilot Program at Pelican Bay State Prison by Order Granting Injunctive Relief, U. S. Northern District Court Citation No. C00-2278-TEH (EDL). Judge Henderson, has stressed that a statewide rollout of the Program must be implemented immediately in order to reduce inmate sexual misconduct incidents at all institutions in the State.

The purpose of the program is to encourage acceptable behavior among inmates and to provide a work environment in which staff is not subject to a sexually hostile work environment because of inmate sexual misconduct. This pilot program is designed to discourage inmates from engaging in Indecent Exposure and Sexual Disorderly.

The CDCR has identified a need to promote compliance with regulations and policies among inmates that commit Indecent Exposure and Sexual Disorderly Conduct violations. When an inmate deliberately exposes his or her person, or the private parts thereof, including genitals, buttocks, or breasts to a staff member or inappropriately touches his or her self under circumstances likely to cause affront, there is a legal mandate requiring a prompt and effective remedial action be taken on the part of CDCR. This Plan for the Management of Indecent Exposure and Sexual Disorderly Conduct Incidents will require that inmates found guilty of committing an Indecent Exposure or Sexual Disorderly Conduct offense would be subject to credit and privilege losses including canteen, appliances, and annual and/or quarterly package restrictions in excess of those currently provided for in the CCR, Title 15, Crime Prevention and Corrections. Additionally, inmates found guilty of committing Indecent Exposure or Sexual Disorderly Conduct offenses may also be subject to the assessment of an "R" suffix at the discretion of the classification committee and retention in the Security Housing Unit (SHU).

Inmates who engage in acts of Indecent Exposure or Sexual Disorderly Conduct will be subjected to Security Measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff. Security Measures are tools used by staff for a determinate period to identify, prevent, and curtail the threatening behavior.

There are two kinds of Security Measures, Precautions and Restrictions. Security Precautions are not used as a punishment and should not be confused with disciplinary restrictions. Security Restrictions are applied as a result of a disciplinary action where inmates are afforded due process.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

Section 3000 is amended to incorporate the word definition for Indecent Exposure and Sexually Disorderly Conduct. PC Section 314 is the basis for the Indecent Exposure definition. It is necessary for this language to be placed in the CCR for clarity and ease of understanding for correctional staff for expedited reference and an explanation specific to inmate behavior regarding indecent exposure. The definition for Sexually Disorderly Conduct was extracted from various sections within the PC and within the *Freitag* Stipulated Agreement ordered by Federal Judge Henderson. These definitions are necessary to endure that the behavior regarding indecent exposure and sexually disorderly conduct are clear as not to be confused with other behavior issues. The Note Section of the CCR has been amended to include PC 314 and 647(a) regarding the definition of Indecent Exposure and Sexually Disorderly Conduct.

Subsection 3315(a) through (f)(5)(K) are unchanged.

Subsection 3315(f)(5)(L), (L)1 and (L)2 is adopted to include indecent exposure or sexually disorderly conduct to the list of misconduct that shall be reportable as a serious rule violation. The specific acts of indecent exposure or sexual disorderly conduct are in violation of section 3007, Sexual Behavior rule violation. Sections 3323(d)(7), (f)(5) and (g)(8) are used to provide staff the parameters of disposition that can be assessed for that offense as a result of a finding of guilt. This section describes the specific loss of privileges for first, second and subsequent offense violation that include the loss of any or all of the following: loss of canteen, loss of appliances, annual and/or vendor packages, telephone privileges and loss of personal property. The first, second and subsequent offense violation(s) shall result in the same privilege loss as above for 90 days and up to 180 days, respectively. This loss of privilege is necessary to provide incentive for proper inmate behavior.

Subsection 3315(g) is unchanged.

The Note Section is amended to add Penal Code Sections 314 and 647(a) as references regarding Indecent Exposure and Sexually Disorderly Conduct.

Subsections 3323(a) through 3323(d)(6) are unchanged.

New subsection 3323(d)(7) is adopted to include Indecent Exposure with a prior court conviction under PC 314 or PC 288 is to be classified as a Division “B” offense. Including this offense, as defined in Section 3000, in this subsection will aid staff in correctly classifying Indecent Exposure with a prior court conviction as a Division “B” offense. Inmates who engage in acts of Indecent Exposure will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Existing subsection 3323(d)(7) through 3323(d)(8) is renumbered to 3323(d)(8) through 3323(d)(9) respectively, and is unchanged.

Subsections 3323(e) through 3323(f)(4) is unchanged.

Subsection 3323(f)(5) is amended to specify that Indecent Exposure without a prior court conviction under PC 314 or PC 288 is included as a Division “D” offense. Including this offense, as defined in Section 3000, in this subsection will aid staff in correctly classifying Indecent Exposure without a prior court conviction as a Division “D” offense. Inmates who engage in acts of Indecent Exposure will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Subsections 3323(f)(6) through 3323(g)(7) are unchanged.

New Subsection 3323(g)(8) is adopted to specify that sexual disorderly conduct, as defined in Section 3000, is included as a Division “E” offense. Including this offense in this subsection will aid staff in correctly classifying sexual disorderly conduct as a Division “E” offense. Inmates who engage in acts of Sexual Disorderly Conduct will be subjected to security measures that are designed to decrease the opportunity for the inmate to repeat the behavior and/or minimize the impact that the behavior has on prison staff.

Existing subsection 3323(g)(8) through 3323(g)(9) is renumbered to 3323(g)(9) through 3323(g)(10) respectively, and is unchanged.

Subsections 3323(h) through 3323(k) are unchanged.

The Note Section is amended to add Penal Code Section 314 as a reference regarding Indecent Exposure and Sexually Disorderly Conduct.

Subsections 3341.5(a) through 3341.5(c)(9)(J) are unchanged.

New subsection 3341.5(c)(9)(K) is adopted to include the category of Sexual Misconduct, in the Segregated Housing Unit (SHU) Term Assessment Chart. Sexual Misconduct includes Indecent Exposure and Sexual Disorderly Conduct (with two or more offenses within a twelve month period). The typical SHU term will be fixed as follows: Low – 3 months, Expected – 6 months and High – 9 months terms. The SHU term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement.

Existing subsection 3341.5(c)(9)(K) through 3341.5(c)(9)(L) is renumbered to 3341.5(c)(9)(L) through 3341.5(c)(9)(M) respectively, and is unchanged.

Subsection 3341.5(c)(10) through 3341.5(c)(10)(B) is unchanged.

The Note Section is amended to add Penal Code Section 314 as a reference regarding Indecent Exposure and Sexually Disorderly Conduct.